

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

OP.No. 4078 of 2001(S)

PETITIONER:

**K.BALAN, ASSISTANT SUPERINTENDENT,
OFFICE OF THE SUPERINTENDENT,
RMS TV DIVISION, CALICUT- 673 032.**

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)

RESPONDENTS:

- 1. POSTMASTER GENERAL,
NORTHERN REGION, CALICUT- 673 011.**
- 2. CHIEF POSTMASTER GENERAL,
KERALA CIRCLE, THIRUVANANTHAPURAM.**
- 3. DIRECTOR GENERAL OF POSTS,
DEPARTMENT OF POSTS, NEW DELHI.**
- 4. UNION OF INDIA, REP. BY ITS SECRETARY,
MINISTRY OF COMMUNICATIONS, NEW DELHI.**

ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/10/2007,
ALONG WITH OP NO. 4088 OF 2001 AND OP NO. 4551 OF 2001, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

ORDER ON CMP NO. 6778/2001 IN OP NO. 4078/2001 S.

DISMISSED

30/10/2007.

SD/- K.BALAKRISHNAN NAIR, JUDGE.
SD/- T.R.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE O.A NO. 1361/97 WITH ANNEXURES ON THE FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P2. COPY OF THE REPLY STATEMENT IN O.A NO. 1361/97 ON THE FILE OF THE CAT, ERNAKULAM BENCH.

EXT.P3. COPY OF THE ORDER IN O.A NO. 1361/97 DT. 10/11/00 OF THE CAT, ERNAKULAM BENCH.

RESPONDENT'S EXHIBITS NIL.

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K.BALAKRISHNAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

O.P. NOS. 4078, 4088 &
4551 OF 2001

Dated 30th October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner was the applicant in O.A No.112/1997 before the Central Administrative Tribunal, Ernakulam Bench. The respondents herein were the respondents in that O.A.

2. The brief facts of the case are the following. The petitioner was recruited in the P & T Department as Time Scale Sorting Assistant on 19.11.1974. Later, he was promoted under the Time Bound One Promotion (TBOP) Scheme and placed in the scale of pay of Rs. 1400-2300, as per order dated 7.3.1991 with effect from 10.2.1991. Still later, as per the Recruitment Rules, he was promoted to the post of Inspector, Railway Mail Service by order dated 29.12.1995, which is also in the same scale of pay of Rs.1400-2300. At the time of promotion under the TBOP scheme, the petitioner was granted fixation under F.R.22 (1) (a) (1). Again, at the time

of promotion as per the Recruitment Rules to the post of Inspector, RMS also, he was granted fixation under the said Rule. Subsequently, the competent authority took steps to cancel the second fixation and recover the alleged excess amount paid to him, by order dated 22.1.1996. Challenging the said order, the O.A was filed. The petitioner also challenges the communication of the Director General, Department of Posts, New Delhi dated 31.5.1995, as the impugned order was issued based on the said letter. According to the petitioner, the 2nd fixation granted to him at the time of actual promotion to the higher post, was strictly in accordance with the above said Rule. The action taken to review the same is unsustainable. It is also pointed out that the impugned action was taken without notice to the affected parties like the petitioner. The respondents resisted the application, contending that the petitioner is entitled to get only one fixation. Since he got the fixation on promotion under the TBOP scheme, he is not entitled to get fixation for the second time. The Tribunal after hearing both sides, dismissed the O.A filed by the applicant, upholding the contentions of the respondents. Hence this O.P challenging the said order of the Central Administrative Tribunal, a copy of which is produced as Ext.P4.

3. The learned senior counsel for the petitioner submitted that F.R. 22.(III) will apply, if only the petitioner is holding a regular post at the time

of promotion. The post held by him under TBOP is not a regular post, it is submitted. The said Rule reads as follows:

“(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.”

The learned senior counsel also relied on the decision of the Apex Court in **Vaman Dattatry Gadagkar v. Director General of Posts** [(1997)9 SCC 225], in support of his submission that the petitioner is entitled to get a second fixation also.

4. The respondents have filed a counter affidavit, supporting the impugned order. The learned counsel for the respondents also relied on the decision of the Apex Court in **Union of India v. Ashoke Kumar Banerjee** [(1998)5 SCC 242], in support of the stand of the respondents.

5. F.R.22.(I)(a)(1) reads as follows:

“Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed to a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the

higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more.”

Going by the above Rule, Government servants, who are promoted to a higher post as per the Recruitment Rules, carrying duties and responsibilities of greater importance, alone are eligible to get fixation. The promotion under the TBOP scheme is not a promotion in accordance with the Recruitment Rules. The incumbent continues to discharge the same functions and duties attached to his post. So, such a promotee is ineligible to get fixation under the above quoted Rule. But, such persons were granted fixation, by virtue of decision No.6 under the above Rule, which is contained in Government of India, Ministry of Finance O.M.No.10(I) E.III/88, dated 13.9.1991. The said decision reads as follows:

“(6) F.R.22(I)(a)(1) is applicable to in situ promotion also:-- Even though promotion under the scheme (career advancements of Groups 'C' and 'D' employees) whereby Groups 'C' and 'D' employees get at least one promotion in their service career, which is in situ, may not involve assumption of higher duties and responsibilities, the benefit of F.R.22(I)(a)(i) (old FR 22-C) will be allowed while fixing pay on promotion as a special dispensation. However, such benefit will not be allowed again at the time of functional promotion to the same scale.”

The petitioner was granted fixation on TBOP promotion, in the light of the

above Government decision. But, the grant is subject to a condition that he will not be further eligible to get a fixation on his actual promotion to a higher post carrying higher duties and responsibilities, as per the Recruitment Rules.

6. Further, F.R.22(III) does not permit a second fixation of pay, if the promotion or appointment is to a post in the same scale of pay. The petitioner's regular promotion was to a post carrying the same scale of pay of the post in which he was working as per the promotion under the TBOP scheme. Therefore, he is ineligible to get a second fixation. But, the learned counsel for the petitioner, contended that the post held by the petitioner under the TBOP scheme cannot be treated as a post held by him on a regular basis. The said contention is also plainly untenable. It was not a temporary or ad hoc promotion. TBOP is a regular promotion in which the incumbent is allowed to enjoy the higher scale of pay, but he continues to discharge the duties in the lower post.

7. Moreover, the point raised by the petitioner is squarely covered against him by the decision of the Apex Court in **Ashoke Kumar Banerjee's** case (supra). The facts of that case and the petitioner's case are identical. The view taken by the Tribunal that the point raised in the O.A

was covered by the above said decision is perfectly legal and valid. We fully agree with the views of the Tribunal in this regard. The claim of the petitioner that his case is covered by the decision in **Vaman Dattatry Gadagkar's** case (supra), cannot be upheld. The facts of that case are different and further the promotions concerned were made before the introduction of the present F.R.22 in 1989. In the result, the Original Petition fails and it is dismissed.

O.P.Nos.4078 & 4088/2001:

8. The point raised by the petitioners in these Original Petitions is covered against them by the decision in O.P.No.4551/2001. Accordingly, these Original Petitions are also dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/

Op nos.4078/01 etc.

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K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR,JJ.

O.P.NOS.4078, 4088 & 4551/2001

JUDGMENT

30.10.2007.